

The Case of Richard Scotcher, one of the Persons impowred by Act of Parliament, to make the River Wye in the County of Surrey Navigable, truly stated. And humbly presented to the consideration of the Parliament of England, Scotland, and Ireland; and every Member thereof.



Y A^t bearing date June 26. 1651. the said Scotcher, with severall others in the said A^t named, were impowred to make the River Wye Navigable, and to receive, and take to them and their Heirs &c. such Rates and Profits for the Portage of every Tun of Goods, as in the said A^t is limited and directed, as by the said A^t, relation being thereto had, more fully may and doth appear.

That all Persons that should disburse any money toward the making the said River and passages, should partake of the bene fit of the said River by virtue of the said A^t, according to their disbursements, equall with the first undertakers named therein.

That all the undertakers impowred by the said A^t, declined the said work except James Pittson of Stoke Esq; and Scotcher, who by agreement took in one Darnelly,

That the River was divided into twenty four parts or shares, and in order to the accomplishment of the work, by a Contract with Sir Richard Weston, twelve of the said twenty four shares were conveyed to him and his Heirs, and Pittson, Darnelly, and Scotcher paid him 1000 l. a peece. In consideration whereof the said Sir Richard Weston was, at his own charge, to make the said River Navigable within the space of one year, to commence from the date of the said Agreement.

That by an underhand Contract, Pittson within a fortnight after, upon the pretence of the payment of 500 l. had four shares of Sir Richard Westons moiety reconveyed to him, whereas Scotcher and Darnelly had but each of them four shares for 1000 l. apiece, neither doth it appear that the said 500 l. was ever paid, but rather that the same was reconvey'd to discharge Sir Richard Weston from a Covenant, to buy Land and build Wharfs, for performance whereof, the Manor of Sutton stood engaged, whereby Scotcher and Darnelly were extremely damnified.

That the said James Pittson, by collusion and other indirect means, either got into his own possession, or sold and received money for all the twelve twenty four parts or shares of Sir Richard Westons, upon pretence that the money so raised should be employed in making the said River Navigable.

That the work ceasing, the said James Pittson earnestly pressed Scotcher, who was then engaged in a full and free Trade of Clothing, to undertake the management of the said work, upon promise that he the said Pittson, upon sale of the remaining parts of Sir Richard Westons shares, would raise money.

That in the carrying on, and perfecting the work, Scotcher hath paid and disbursed 5537 l. or thereabouts as by account may appear.

That according to the computation of the whole charge, expended in making the said River Navigable, the same as divided in twenty four parts or shares, each twenty fourth part stands charged with 446 l. 6 s. 6 1/2 d. so that Scotchers four shares or parts, comes to 1775 l. 6 s. 3 d. which being deducted, and all his other receipts from the said Pittson, and others accounted, he remains out of Purse about 2344 l. besides several summes of money paid for Pittson to redeem his Goods out of Execution, and Debts due upon the River, wherewith as undertaker, he stands charged, and is sued for, while the said Pittson by fraude, force, surprize, or other indirect practises, hath gotten into his hands twelve parts of twenty four of the said River, together with the whole Wharfage, and hath for ought can appear, paid or disbursed (more than by him received by the sale of Sir Richard Westons shares, and the Wharfage) but 387 l. 14 s. 10 d.

That Scotcher and the Partners that bought shares, of Sir Richard Westons and of Darnelly, were forced to buy a proportionable part of the Wharfage futable to their said shares, of Pittson, for which they became obliged to pay him 1600 l. for payment of 1000 l. being part thereof, Scotcher, and other the Participants, became bound interchangeably in a Bond of 2000 l. the remaining 600 l. being discharged with the consent of the said Pittson, for other weighty considerations then appearing.

That before the said 1000 l. grew due, it appeared that Pittson had mortgaged the principal Wharfe, as also, that although he pretended, that he had bought, and paid for the Land on which the Wharfs were made, that he had onely taken some parcels of Land by force, set out, as is believed by the Commissioners, but not contracted for, nor satisfaction made to the respective owners thereof, as by the A^t of Parliament is in that behalf directed.

That Scotcher and the Partners, not knowing how to be ensured in their Title, or to be released against their Bond of 1000 l. preferred their Bill in Chancery, Pittson having put the said Bond in suit.

That Pittson, in his Answer to their Bill, swears that there is 1600 l. due to him from Scotcher and the Participants, whereupon the Court of Chancery orders the Participants to bring in the 1600 l. or otherwise the Injunction to cease, as by order of 10. August 1656. may at large appear.

That Pittson having got a Judgement upon the Bond of 2000 l. for the payment of 1000 l. as aforesaid, the Partners were forced to bring Writs of Error, and give security of persons of worth and honour, to the value of 16000 l. after which for want of Error, Judgements were affirmed.

That to prevent the danger thereof, although Pittson could make no good Title, yet upon promise by him made, that the Mortgage should be cleared, and Conditions on his part performed, the Participants, or some one or more of them, paid the said Pittson the said 1000 l. by Acquittances producible may and doth appear, and by an Order of Consent, bearing date 10. August 1656. referred all matters in difference, to Mr. Thomas More of Rigate, and Mr. Richard Forbench of Ripley in the County of Surry.

That much time being spent, and several Commissions worn out; by a latter Order of the 10 of August 1657. another Commission was taken out for five Commissioners, viz. Mr. Thomas More, Mr. John Westbrooke, Mr. John Lauder, Mr. Richard Forbench, and Mr. John Child, who before Scotcher would signe the Order of Submission, solemnly promised that his business should be first considered, in order to his disbursements in making the said River Navigable.

That contrary to their said engagement, the said Commissioners that met and acted therein, not onely refused to hear Scotcher, or receive his accounts or proofs thereon, or any other on behalf of the Participants, but made an Award *ex parte*, onely upon the affirmations of the said Pittson, which said Award the said Pittson caused to be Filed, and made a Decree of the Court of Chancery, and passed under the Broad Seal.

That in the said Award, notwithstanding Pittson in his Answer upon Oath did demand but 1600 l. which was all paid before this last Commission, yet did the said Commissioners order the payment of 1992 l. 18 s. by the Participants, besides the performance of several other impossibilities in Law.

That upon motion of the Partners, and after examination, Certificates and debates concerning the regularity of passing the said Decree, the Court did declare that the said Decree was obtained by surprize, and thereupon ordered the same to be set aside and vacated.

February 23. 1657. Council was heard concerning the Award, and hearing what was alledged on both sides, the Court did declare, that they were not satisfied that the said Award should be confirmed.

March 5. 1657. upon pretence of the same Award, the Court order that 1600 l. therein awarded should be brought into Court, or the Injunction to cease.

That the Participants depending upon the justice of their Cause, although they could not judge themselves obliged in equity to an Award made *ex parte*, yet they offered to make a competent security out of their Estates in the River (for their parts of the Wharfage thereto appertaining, they had but a few moneths before paid 1600 l. to Pittson) or to give other personal security, but nothing but the money would satisfy, whereupon the Participants being unwilling to pay 1600 l. upon such an unequitable account, the Injunction was dissolved, and Scotcher and the Partners left lyable with their security to Judgements of 16000 l. whereas it had appeared by Acquittance under the hand of the said James Pittson, that the original Debt was paid and satisfied.

That soon after, two of the Participants were taken and charged in Execution, and one of the Bail upon the Writs of Error, arrested upon great Actions, and a *Scire Facias* sued out to make him liable to the Judgement, to the hazard of his ruin, and all the rest of the Participants and their security laid out for, Writs being taken out against them.

That seeing no possibility of obtaining relief, according to the equity of their cause in the Court of Chancery, who had grounded their Judgements upon an Award made *ex parte*, and by themselves upon solemn debate denied confirmation: and two of the Partners being under Execution, and finding, that not onely themselves, but their security must suffer unavoidable ruin, the said Partners (or some of them) were constrained to submit to an agreement, and to pay the said Pittson 1500 l. by the assignment of three shares, besides the discharge of Debts owing by the said Pittson to the value of 350 l. or thereabouts.

That notwithstanding the said Pittson would not discharge the said Judgements, unlesse Scotcher and the Participants signed a general Release; so that after all, neither they nor their security could be freed from the danger thereof.

That in pursuance of the said agreement made by some of the Partners, or on their behalf, a Letter was sent to Scotcher, by some of them, intimating that a way was found out to secure his Debt, earnestly pressing him to come to Town, averring that there was no design on foot to his prejudice, whereupon he accordingly met as appointed, but contrary to his meaning or intention, being surrounded with threats of his adversary, and intreaties of the Partners and Bail, he was forced to Sign and Seal a Release, but with open protestation against the force put upon him, as he hopeth to prove.

That there is due to Scotcher, from the said James Pittson as by account will appear, by moneys laid out, over and above his proportion, and Debts paid, and owing upon the River, with which as undertaker he stands charged, and for part whereof he hath been sued, to the value of about 3000 l. which he could by Law recover, were he not barred by that Release extorted from him as aforesaid.

He therefore most humbly appeals unto the Justice of this High and Honourable Court, praying the Judgement thereof, whether he ought not to be relieved for his said disbursements, whereto he was warranted by Act of Parliament, the said Release notwithstanding? the same being forced from him, as well by the invincible necessity created by the dissolution of the Injunction, (granted upon such equitable grounds by the Court of Chancery) for his and the Participants not submitting to the payment of 1600 l. awarded *ex parte*, of which there was not one penny due, thereby laying him, the Participants, and their Security under the power of Judgements of 16000 l. the principal money whereof was satisfied, as was proved by Acquittances produced to that Court, upon Grant thereof; as also the same being extorted from, and sealed by him, while under a force, the said Pittson refusing to discharge the said Judgements without Scotchers Release. By all which arbitrary and irregular proceedings of the said James Pittson, (who hath taken advantage of the delay or refusal of the Court of Chancery, to relieve the Participants according to equity) he the said James Pittson, is gotten into possession of fifteen shares of the said River, hath received in money and receipts, and by discharge of Debts, to the value of about 4200 l. having, for ought appears by any account yet produced, never disbursed above 4087 l. 14 s. 10 d. so that he hath received in money, more than laid out, about 113 l. 14 s. 10 d. and hath fifteen shares of the said River for nothing, while Scotcher hath expended his whole Estate in making the said River Navigable, and still remains lyable to many great Debts accruing thereby: from which he can no way be relieved, without the favourable owning of this High Court, to whom he appeals,

And for whom (as in duty bound) he shall daily pray.

Richard Scotcher.

1657